

# **Attachment G**

## **Equity Mechanism**

# **Equity Mechanism Transfer of Development Rights Program**

## **Introduction**

As discussed in Fact Sheet 12, Equity Mechanisms (see Attachment H-5), Transfer of Development Rights (TDR) and Purchase of Development Rights (PDR) are planning techniques mainly developed to protect open space through acquisition of the development rights of land. Typically, these programs are incentive based and allow property owners to separate and sell or transfer the development rights for their property from the bundle of property ownership rights they retain. Both programs are based on the idea that land ownership involves a bundle of rights (e.g. surface rights, air rights, mineral rights, or development rights, etc.) and that these rights can be separated and sold individually.

In an effort for making agricultural uses more economically viable, County staff are currently pursuing a Purchase of Agricultural Conservation Easements (PACE) Program, a type of PDR, which will be used to provide monetary compensation to farmers that are willing to place agricultural conservation easements over their land. Development of the program will focus on providing compensation to those farmers negatively affected by the GP Update. Preparation of the program is underway and a conceptual program will be presented to the Board of Supervisors this fall.

While the County is currently pursuing a PACE program, significant interest was also voiced during the 2009-2010 Planning Commission hearings by the public and the commissioners for a program that could provide additional compensation to property owners that would be negatively impacted by the GP Update. The most viable option appears to be some form of TDR that allows property owners to sell the potential units that they would lose from the GP Update to General Plan Amendments that would receive increased density in the future.

At the April 16, 2010 hearing on the GP Update, the Planning Commission directed staff to develop a conceptual TDR program that would be presented to the Board of Supervisors along with the GP Update. The Planning Commission also recommended a series of criteria to guide development of the concept. Public workshops were held on Friday, May 7, 2010 and Friday June 18, 2010 to solicit public input on the formulation of a TDR program. A summary of those workshops is included in the planning report provided on the GP Update web site at the following link:

[http://www.sdcounty.ca.gov/dplu/gpupdate/docs/pc\\_jul92010/pc\\_jul092010\\_tdr.pdf](http://www.sdcounty.ca.gov/dplu/gpupdate/docs/pc_jul92010/pc_jul092010_tdr.pdf)

Based on the feedback obtained from those workshops; staff developed a concept for a TDR program for San Diego County. The main points of that program are summarized below and then further explained in the following sections. On July 9, 2010, the Planning Commission supported staff's TDR concept and inclusion of a more aggressive PACE program with it when the General Plan Update is presented to the Board of Supervisors. The main points of the TDR concept are summarized below and then further explained in the following sections.

1. No modifications to the GP Update densities are proposed.
2. GP Update density reductions will not be voluntary.

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3. Property owners can chose whether or not, when, and how they wish to sell their transferable rights.
4. Purchase of TDRs will not be required to achieve GP Update densities.
5. Amend County policies to ensure that purchase of TDRs be considered for future GPAs.
6. Upon approval of the GP Update, direct staff to initiate work with the communities of Campo and Borrego for continued refinement of their community land use plan with particular attention to TDRs. Staff shall also solicit interest from all communities for land use plan refinements and the development of possible receiving sites on an annual basis.
7. Incorporate, where feasible, the purchase of TDRs into the Purchase of Agricultural Conservation Easement program.
8. Report annually on development under the GP Update and the shortfall of any projected units due to underdeveloped projects, land acquisitions, or other relevant actions.
9. Transferable rights will be determined from an exhibit that assigns a units-per-acre factor based on a formula that accounts for the difference between existing and proposed General Plan designations and constraints that commonly impact development yield.
10. The County will allow the market to dictate price.
11. Implementation of the TDR program would be accomplished by two zoning ordinance amendments. Initial drafts are included in Attachments A and B.

### **Summary of TDR Program Concept**

#### **1) Reduced Density Reductions**

Many attendees of the TDR workshops expressed their concerns over the significant density reductions that the GP Update proposes for certain lands in the unincorporated area. Most point out the densities of one dwelling unit per 40 acres, 80 acre and 160 acres as being the most concerning. For many properties, these densities are more than a 90 percent reduction from the density in the current General Plan. Some indicate that they will not be able to support such density reductions without a TDR program. Others say that they object to these densities all together.

**Proposal:** No modifications to the General Plan Update densities are proposed.

**Rationale:** The GP Update Recommended Map includes no areas designated at one dwelling unit per 160 acres and significantly reduced the amount of area designated one dwelling unit per 80 acres from the original staff recommendation. The densities of one dwelling unit per 40 acres and 80 acres have been included in the GP Update since early in the process and are key to its mapping framework. Additionally, the Board of Supervisors did not direct staff to evaluate a mapping scenario that excluded these densities so such a concept is not considered in the draft Environmental Impact Report (EIR). Such a

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recommendation would require substantial modification to the GP Update document and EIR.

### **2) Voluntary Density Reductions**

Some commenters, such as the Save Our Rural Economy (S.O.R.E.) organization, at the TDR workshops and on the GP Update suggest that the currently proposed GP Update density reductions be voluntary. Voluntary reductions would allow property owners to decide if they want to retain their densities under the current General Plan or transfer their development rights and reduce their allowed density. With voluntary TDR programs, incentives are typically provided to compel the transfers.

**Proposal:** GP Update density reductions will not be voluntary.

**Rationale:** The majority of voluntary TDR programs implemented across the nation have been unsuccessful. A voluntary program would not achieve the objectives of the GP Update and it would require significant public investment in incentives to produce any meaningful results. A voluntary TDR program was also not evaluated in the GP Update draft EIR.

### **3) Voluntary Transfers from Sending Sites**

Sending sites are those sites that received reduced density designations as a result of the GP Update. The TDR program would allocate sending sites a certain number of transferable development rights based on the reduction in density resulting from the GP Update. The owner of the sending site would have the right to sell the transferable development rights to another person or entity. A draft ordinance

**Proposal:** Property owners can chose whether or not, when, and how they wish to sell their transferable rights.

**Rationale:** While all efforts will be made to streamline the transfer process, transferring development rights would require some effort and up front costs. Therefore, the owner of those rights could elect if they want to transfer them.

### **4) Requiring Purchase of TDRs to Realize GP Update Densities**

Staff's original recommendation was that properties that received increases in density as a result of the GP Update should be required to purchase TDRs to realize those increased densities. This strategy would create an immediate market for the TDRs and address the perceived inequity that is based on certain properties receiving greater densities while others receive less. While some were supportive of this concept, others objected citing concerns over housing affordability, the ability to achieve GP Update densities and its objectives, Housing Element compliance, and the already high costs of developing land.

**Proposal:** Purchase of TDRs would not be required to achieve GP Update densities.

**Rationale:** In general, it seemed that most of the stakeholders that requested a TDR program either objected to this concept or did not feel strongly about it. Therefore, there is little reason to retain this as an element of the program if it was not strongly supported.

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### **5) Incorporating the Purchase of TDRs into Future GPAs**

Future privately-initiated General Plan Amendments (GPAs) could include purchase of TDRs. Depending on the number of GPAs, this could be a significant market for TDRs. Details on purchase requirements could be provided in County policy or determined on a case-by-case basis at the time the Plan Amendment Authorization (PAA) or GPA is proposed.

**Proposal:** Amend County policies to ensure that purchase of TDRs be considered for future GPAs.

**Rationale:** There was general consensus that the purchase of TDRs should be considered for future GPAs that increase densities. However, there was also some concern that when a GPA is privately pursued to increase densities that a significant investment is already required by the applicant just to process the application. Additionally, other benefits such as infrastructure and mitigation fees could be provided by the GPA at a substantial cost. Therefore, the norm could be to include the purchase of TDRs with GPAs that increase density but there are a number of circumstances that could be grounds for an exception. Stakeholders have suggested that the PAA process be used to specify up front what level of TDR is expected of a GPA.

### **6) County-led Development of Receiving Sites**

The County could plan for receiving sites of TDRs, creating another market for TDRs and facilitating their use. Adoption of receiving sites is typically accomplished by GPA with corresponding environmental review. As a result, individual applicants do not need to process their own GPAs to achieve the higher densities allowed for in the receiving site.

**Proposal:** Upon approval of the GP Update, the Board of Supervisors would direct staff to initiate work with the communities of Campo and Borrego Springs for continued refinement of their community land use plan with particular attention to TDRs. Staff shall also solicit interest from all communities for land use plan refinements and the development of possible receiving sites on an annual basis.

**Rationale:** Continued maintenance, refinements, and enhancements to the GP Update are anticipated. Several communities have already expressed the desire for further planning work in their communities after adoption of the GP Update. When areas are identified for additional development, they may be appropriate as receiving sites for TDRs.

### **7) County Purchases of TDRs**

The County could also purchase TDRs from property owners and either retire the TDRs or bank them for future application with County-initiated actions. The main difficulty with this concept is the source of funding. The use of general fund monies would divert general tax payer funds from other programs provided by the County. A surcharge on permits or a similar fee would be opposed by the development community and contrary to the County's efforts to reduce costs.

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**Proposal:** Incorporate, where feasible, the purchase of TDRs into the Purchase of Agricultural Conservation Easement (PACE) program.

**Rationale:** Due to the current economic climate, it is unlikely that the County would fund the direct purchase of TDRs. This could be revisited in the future when economic conditions improve. In the meantime, TDR purchases could be incorporated into other programs. County purchases of land for open space will likely include a purchase of any TDRs that run with the land since they should be included in the properties appraised value. The PACE program could also include TDR purchases when conservation easements are purchased over agricultural lands if the TDR is included in the appraised value used as the basis of the purchase. Funding for PACE has not yet been determined but will likely include a combination of federal and State funds, and possibly mitigation funds and County contributions.

### **8) Monitoring GP Update Housing Production**

Interest has been expressed in monitoring performance of the GP Update as it is implemented to provide feedback for future decision making and planning efforts that may produce more receiving sites. Numerous aspects of the GP Update implementation are anticipated to be tracked and reported on an annual basis. This framework could serve as a basis for the suggested housing information.

**Proposal:** Report annually on development under the GP Update and the shortfall of any projected units due to underdeveloped projects, land acquisitions, or other relevant actions.

**Rationale:** This data would allow the County and interested parties to monitor the growth of the unincorporated area in comparison to projections developed by the County during the GP Update and with SANDAG estimates.

### **9) Transferable Rights Allocation to Down-zoned Properties**

This component of the program refers to how transferable development rights of a particular property are calculated and assigned to a given property. Numerous stakeholders commented that any allocation of rights should take into account constraints since most properties would not be able to fully realize their current density.

**Proposal:** Transferable rights would be determined from an exhibit that assigns a units-per-acre factor based on a formula that accounts for the difference between existing and proposed GP designations and constraints that commonly impact development yield. These exhibits for each community are provided on the GP Update web site at the following link:

<http://www.sdcountry.ca.gov/dplu/gpupdate/tdr.html>

**Rationale:** Using a standardized approach to allocate development rights would avoid work effort and controversy associated with assigning rights based on individual evaluation. Disagreements would likely be raised from some property owners that believe or know that their property could be developed at a higher density. However, disagreements are anticipated with whichever approach to allocations is applied. This approach maximizes consistency and minimizes effort

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so processing costs are kept low. Disagreements could be resolved through an appeals process.

### **10) Pricing of Transferable Rights**

The open market is the most common means to dictate price. Buyers and sellers could negotiate directly, but the County could facilitate connections by hosting a “marketplace” website or similar forum. If necessary, price floors or ceilings could be established.

**Proposal:** That the County allows the market to dictate price.

**Rationale:** Most stakeholders seem to prefer that the County not be involved in the sale/purchase of transferable rights. Similarly, there is limited benefit for the County to be involved unless there is a proven need for external controls.

### **11) TDR Implementation**

The TDR program would be implemented by two Zoning Ordinance amendments. One amendment would create a new Special Area Designator for use in designating those particular properties that are part of a TDR program. The second amendment would change the zoning of the parcels that were down-zoned with the GP Update to assign them with the new TDR Special Area Designator and to provide the details of how this TDR program would be implemented. Drafts of these two amendments are included in Appendices 1 and 2.

# **Appendix 1**

## **Draft Special Area Designator Ordinance**



## WORKING DRAFT

ORDINANCE NO. \_\_\_\_\_ (NEW SERIES)

### AN ORDINANCE AMENDING THE ZONING ORDINANCE CREATING A TRANSFER OF DEVELOPMENT RIGHTS SPECIAL AREA DESIGNATOR

The Board of Supervisors of the County of San Diego ordains as follows:

**Section 1.** The Board of Supervisors declares that the intent of this ordinance is to update the Zoning Ordinance by making the following amendments to create a transfer of development rights special area designator. The Board finds that these amendments are reasonable and necessary for the public health, safety, and welfare and are consistent with the General Plan.

**Section 2.** Section 5025 of the San Diego County Zoning Ordinance is amended to read as follows:

5025 LISTINGS OF DESIGNATORS.

The following shall be used as appropriate.

<u>Designator</u>	<u>Special Area Designator</u>	<u>(See Section)</u>
A	Agricultural Preserve	5100-5110
B	Community Design Review Area	5750-5799
D	Design Review	5900-5910
E	Fault Displacement	5400-5406
F	Flood Plain	5500-5522
G	Sensitive Resource	5300-5349
H	Historic/Archaeological Landmark or District	5700-5747

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J	Specific Historic District	5749
P	Planned Development	5800-5806
R	Coastal Resource Protection Area	5950-5957
S	Scenic	5200-5212
T	Unsewered Area	5960-5964
V	Vernal Pool Area	5850-5856
W	Flood Channel	5450-5472
X	Transfer of Development Rights	XXXX-XXXX

**Section 3.** Sections 5XXX through 5XXX, inclusive, are added to the San Diego County Zoning Ordinance to read as follows:

### TRANSFER OF DEVELOPMENT RIGHTS AREA REGULATIONS

#### 5XXX TITLE AND PURPOSE.

The provisions of Sections 5XXX through 5XXX, inclusive, shall be known as the Transfer of Development Rights or TDR Area Regulations. The purpose of these regulations is to provide a framework within the Zoning Ordinance to accommodate the transfer of development rights. The TDR Area Regulations are not intended as the sole mechanism for implementation of development rights transfers in the County of San Diego. Other options exist for implementation of TDR programs and these regulations provide one possible avenue within the framework of the Zoning Ordinance.

Possible application of the TDR Area Regulations include, but are not limited to:

- (a) preserve open space, scenic views, critical and sensitive areas, and natural hazard areas;
- (b) conserve agriculture and forestry uses of land;
- (c) protect lands and structures of aesthetic, architectural, and historic significance;
- (d) retain open areas in which healthful outdoor recreation can occur; and
- (e) implement the San Diego County General Plan.

## **Appendix 1**

### **5XXX APPLICATION OF TRANSFER OF DEVELOPMENT RIGHTS DESIGNATOR**

The Transfer of Development Rights Area designator shall be applied in accordance with the stated purpose of the TDR regulations at Section 5XXX. The ordinance applying said designator to particular property shall contain a statement of the objective(s) sought to be achieved, a description of the rights that the designator provides to affected properties, and the process for transferring or receiving such rights. The Transfer of Development Rights Area designator may be used for properties that may sell certain development rights (referred to as sending sites) and those that may receive development rights (referred to as receiving sites). The specific allowances for a particular property shall be specified by the ordinance applying the designator.

### **5XXX LIMITATIONS ON TRANSFERS OF DEVELOPMENT RIGHTS**

Any transfer of development rights pursuant to this ordinance authorizes density transfers consistent with the general plan. The general plan maximum densities shall not be exceeded.

# **Appendix 2**

## **Draft TDR Ordinance**

## WORKING DRAFT

ORDINANCE NO. \_\_\_\_\_ (NEW SERIES)

### AN ORDINANCE CHANGING THE ZONING CLASSIFICATION OF CERTAIN PROPERTY AND IMPLEMENTING A TRANSFER OF DEVELOPMENT RIGHTS ASSOCIATED WITH THE GENERAL PLAN UPDATE

The Board of Supervisors of the County of San Diego ordains as follows:

**Section 1.** The Board of Supervisors declares that the intent of this ordinance is to amend the Zoning Ordinance in support of a transfer of development rights program associated with the General Plan Update. This ordinance is specifically intended to isolate the development rights removed as a result of the General Plan Update from a property and make those rights available for transfer. The Board finds that these amendments are reasonable and necessary for the public health, safety, and welfare and are consistent with the General Plan.

**Section 2.** The zoning classification of certain real property delineated on the Map identified as Document No. \_\_\_\_\_, on file with the Clerk of the Board of Supervisors of the County of San Diego, is hereby changed to add an X designator to the Special Area Regulations section.

**Section 3.** The following transfer of development rights program is hereby adopted for the property affected by this ordinance.

#### A. OBJECTIVES

(1) The purpose of these provisions is to:

- (a) preserve open space, scenic views, critical and sensitive areas, and natural hazard areas;
- (b) conserve agriculture and forestry uses of land;
- (c) protect lands and structures of aesthetic, architectural, and historic significance;
- (d) retain open areas in which healthful outdoor recreation can occur;
- (e) implement the San Diego County General Plan Update;
- (f) retain, in transferable form, those development rights removed from a property as result of the General Plan Update with consideration of regulatory and physical constraints; and
- (g) provide a mechanism whereby those development rights may be transferred to other properties.

#### B. DESIGNATION OF SENDING SITES

- (1) Properties receiving the TDR designator with this ordinance are designated as sending sites.
- (2) Each sending site established by this ordinance shall have the right to sever the rights to develop that were reduced as a result of the General Plan Update from the parcel in a sending

## Appendix 2

site and to sell those rights to a transferee consistent with the objectives of this program in Section A.

(3) The transferable rights are derived from the development constraints in place at the time the General Plan Update was adopted compared to the General Plan Update allowed densities. The number of transferable rights available to a property are calculated based on predetermined conversion factors mapped on the TDR Exhibit dated XXXXXX, on file with the Department of Planning and Land Use.

These conversion factors account for density and minimum lot size constraints in place at the time the General Plan Update was adopted such as:

- (a) the General Plan regional category and land use designations;
- (b) the Zoning Ordinance Maximum Density and Minimum Lot Size designations; and
- (c) the Groundwater Ordinance Residential Density Controls.

These conversion factors also account for other constraints addressed by regulations at the time the General Plan Update was adopted with available mapping data such as:

- (a) steep slopes;
- (b) sensitive biological habitat and wetlands;
- (c) emergency services travel time standards;
- (d) floodways and flood plains; and
- (e) dead end road length standards.

### B. DESIGNATION OF RECEIVING SITES

- (1) The establishment of receiving sites should be considered for all post-General Plan Update general plan and zoning amendments that proposed to increase densities.
- (2) Receiving sites established shall be consistent with the general plan and community plan.

### C. RIGHT TO TRANSFER DEVELOPMENT RIGHTS

(1) Each legal lot established as a sending site by this ordinance shall have the right to sever the rights to develop that were reduced as a result of the General Plan Update from the parcel in a sending site and to sell those rights to a transferee consistent with the objectives of this program in Section A.

(2) The transferee may retire the rights, resell them, or apply them to property in an eligible receiving site in order to obtain approval for development at a density or intensity of use greater than would otherwise be allowed on the land, up to the maximum density indicated in the general plan.

(3) Any transfer of development rights pursuant to this ordinance authorizes only an increase in maximum density consistent with the general plan and shall not alter or waive the development standards of the receiving site. Nor shall it allow a use otherwise prohibited in a receiving district.

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### D. DETERMINATION OF TRANSFERABLE DEVELOPMENT RIGHTS

(1) The Director shall be responsible for:

- (a) determining, upon application by a property owner, the development rights that may be transferred from a sending site and issuing a transfer of development rights certificate upon application by the property owner.
- (b) maintaining permanent records of all certificates issued, deed restrictions and covenants recorded, and development rights retired or otherwise extinguished, and transferred to specific properties; and
- (c) making available forms on which to apply for a transfer of development rights certificate.

(2) An application for a transfer of development rights certificate shall contain:

- (a) a certificate of title for the sending site prepared by an attorney licensed to practice law in the state of California;
- (b) a plat of the proposed sending parcel and a legal description of the sending parcel prepared by a registered civil engineer authorized to practice land surveying or licensed land surveyor;
- (c) names, addresses, telephone numbers and signatures of all owners;
- (d) copy of the current owner's recorded deed;
- (c) applicable fees; and
- (d) such additional information required by the Director as necessary to determine the number of development rights that qualify for transfer and prepare the certificate.

(3) A transfer of development rights certificate shall identify:

- (a) the property owner;
- (b) a legal description of the sending site on which the calculation of development rights is based;
- (c) a statement of the number of development rights (quantified in dwelling units) eligible for transfer;
- (d) the date of issuance;
- (e) the signature of the Director or designee; and
- (f) a serial number assigned by the Director.

(4) No transfer of development rights under this ordinance shall be recognized by the County of San Diego as valid unless the instrument of original transfer contains the Director's certification.

(5) Appeal. The issuance of a transfer of development rights certificate and the number of development rights eligible for transfer contained in the certificate may be appealed pursuant to the Administrative Appeal Procedures beginning at Section 7200 of the Zoning Ordinance.

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### E. INSTRUMENTS OF TRANSFER

(1) An instrument of transfer shall conform to the requirements of this section. An instrument of transfer, other than an instrument of original transfer, need not contain a legal description or plat of the sending parcel.

(2) Any instrument of transfer shall contain:

- (a) the names of the transferor and the transferee;
- (b) a certificate of title for the rights to be transferred prepared by an attorney licensed to practice law in the state of California;
- (c) a covenant the transferor grants and assigns to the transferee and the transferee's heirs, assigns, and successors, and assigns a specific number of development rights from the sending site to the receiving site; and
- (d) a covenant by which the transferor acknowledges that he has no further use or right of use with respect to the development rights being transferred.

(3) An instrument of original transfer is required when a development right is initially separated from a sending site. It shall contain the information set forth in paragraph (2) above and the following information:

- (a) a legal description and plat of the sending parcel prepared by a licensed surveyor named in the instrument;
- (b) the transfer of development rights certificate described in Section D above; and
- (c) a covenant that all provisions of the instrument of original transfer shall run with and bind the sending site and may be enforced by the County of San Diego.

(4) If the instrument is not an instrument of original transfer, it shall include information set forth in paragraph (2) above and the following information:

- (a) a statement that the transfer is an intermediate transfer of rights derived from a sending site described in an instrument of original transfer identified by its date, names of the original transferor and transferee, and the book and the page where it is recorded in the County of San Diego.
- (b) copies and a listing of all previous intermediate instruments of transfer identified by its date, names of the original transferor and transferee, and the book and the page where it is recorded in the County of San Diego.

(5) County Counsel shall review and approve as to the form and legal sufficiency of the following instruments in order to affect a transfer of development rights to a receiving site:

- (a) An instrument of original transfer;
- (b) An instrument of transfer to the owner of the receiving parcel; and
- (c) Instrument(s) of transfer between any intervening transferees.

Upon such approval, the Director shall notify the transferor or his or her agent, record the instruments with the County Recorder, and provide a copy to the County Assessor. Such instruments shall be recorded prior to release of applicable development approvals for the receiving site.



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### F. APPLICATION OF DEVELOPMENT RIGHTS TO A RECEIVING SITE

(1) This section provides a conceptual process for application of transferred development rights to a receiving site. The specific process should be specified for a receiving site when that site is established.

(2) A person who wants to use development rights on a property in a receiving site may submit an application for the use of such rights on a receiving parcel. The application could be part of an application for a development permit. In addition to any other information required for the development permit, the application should be accompanied by:

(a) an affidavit of intent to transfer development rights to the property; and

(b) either of the following:

1. a certified copy of a recorded instrument of the original transfer of the development rights proposed to be used and any intermediate instruments of transfer through which the applicant became a transferee of those rights; or

2. a signed written agreement between the applicant and a proposed original transferor (accompanied by an application for a transfer of development rights certificate from the transferor) in which the proposed transferor agrees to execute an instrument of such rights on the proposed receiving parcel when the use of those rights, as determined by the issuance of a development permit, is finally approved.

(2) In the case of a privately initiated general plan amendment that include transfers of development rights to achieve a density in excess of the General Plan, the applied development rights should be extinguished at the time of final approval of the amendment.

(3) The County should also pursue general plan amendments that establish receiving area where future subdivisions and development have the ability to take advantage of transferable development rights.

(3) Where receiving areas are established, the County of San Diego may grant preliminary subdivision approval of a proposed development incorporating additional development rights upon proof of ownership of development rights and covenants on the sending site being presented to the County of San Diego as a condition precedent to final subdivision approval.

(3) No general plan amendment or final plat of subdivision, including minor subdivisions, should be approved and no development permits should be issued for development involving the use of development rights unless the applicant has demonstrated that:

(a) the applicant will be the bona fide owner of all transferred development rights that will be used for the construction of additional dwellings or the creation of additional lots;

(b) a deed of transfer for each transferred development right has been recorded in the chain of title of the sending site and such instrument restricts the use of the parcel in accordance with this ordinance; and

(c) the development rights proposed for the subdivision or development have not been previously used. The applicant shall submit proof in the form of a current title search prepared by an attorney licensed to practice law in the state of California.

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**Section 4.** Expiration. Unless extended by ordinance approved by the Board of Supervisors, this ordinance and the resulting special area designators and transferable development rights shall expire on June 30, 2030.